IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8368 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VORA YASINMIYA UMARMIYA

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

1. The petitioner by filing this writ petition under Article 226 of the Constitution of India has, challenged the legality and validity of the order of detention dated 10.7.2000 passed by the respondent no. 1 in exercise of his powers conferred upon him under sec. 3(2) of the

Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act).

2. As per the papers of grounds of detention, the petitioner-detenu is a 'bootlegger' within the meaning of sec. 2(b) of the Act as well as a 'dangerous person' within the meaning of sec. 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing the order of detention to arrive at a subjective satisfaction, the detaining authority has placed reliance on 5 cases, out of which, cases at sr. no. 1 and sr. no. 5 mentioned in grounds of detention are cases under the Prohibition Act and rest of the 3 cases are IPC cases. The detaining authority has also placed reliance on the statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. That statements were verified by detaining authority on 30.8.2000 and he passed the order of detention on 10.7.2000. That order has been challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavit-in-replies,in reply to the main petition to controvert the grounds of attack.

4. Ms DR Kachhavah learned advocate for the petitioner argued that out of 5 cases, last case under the provisions of Prohibition Act was registered in Kadi Police Station on 16.3.2000 and in that case,he was released on bail on 19.3.2000 and, thereafter, after about 4 months, this order of detention has been passed. There is a delay in between the date of last offence and the date of order of detention. Mere delay will not vitiate the order, but it requires to be explained by the detaining authority. In this case, the delay of 3 months has not been explained by the detaining authority and, therefore, it cannot be said that petitioner's activities were continuos and prejudicial to the maintenance of public order after release on bail on 19.3.2000. She has cited the authority of Elesh Nandubhai Patel vs. Commissioner of Police, Ahmedabad City & Ors., reported in 1997(1) GLH 381, wherein it has been held that what is required by law is that the delay must be satisfactorily explained by the detaining authority. This unexplained delay makes a ground for detention not proximate, vitiating the order of detention itself, and therefore, the order of detention is bad in law, illegal and the same is required to set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 10.7.2000 passed by respondent no. 1 with respect to detenu is set aside. The detenu is ordered to be released forthwith, if he is not required in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)

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